

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 12

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRUNO ZUMBUHL

Appeal No. 2004-1230
Application No. 09/925,232

ON BRIEF

Before KIMLIN, PAK and JEFFREY T. SMITH, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 7-9, all the claims remaining in the present application.¹ Claim 7 is illustrative:

7. In a tamper-indicating threaded closure, including a threaded cap and a tamper-indicating ring which splits at at least one point on the periphery thereof as said closure is removed from the container, said ring being interconnected to

¹ Although appellant withdrew claims 1-6 and 10 in the amendment filed on March 4, 2003 (Paper No. 6), the claims have not been physically cancelled.

Appeal No. 2004-1230
Application No. 09/925,232

said cap by frangible bridges, said tamper-indicating ring including a plurality of tabs hingedly interconnected to an inner surface of said ring, said tabs serving to sever said bridges as said cap is removed, the improvement comprising: said tabs being of substantially equal width along the periphery of said ring, and being separated from each other by spaces at least equal to the width of said tabs; said ring having first and second vertically-oriented scores to enable splitting of said ring, said scores being spaced from each other by a distance at least equal to the width of said tabs.

The examiner relies upon the following reference as evidence of obviousness:

Mori et al. (Mori)	4,565,295	Jan. 21, 1986
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Appellant's claimed invention is directed to a tamper-indicating threaded closure of the type used to seal a container. The closure includes a threaded cap and a tamper-indicating ring. The ring splits at at least one point on its periphery when the closure is removed from the container. The ring also includes a plurality of tabs which engage corresponding beads on the container, and the ring is interconnected to the threaded cap by frangible bridges that are severed when the cap is removed. Appellant's asserted improvement over this admittedly known tamper-indicating threaded closure is positioning first and second vertically-oriented scores on the ring, which enable the splitting of the ring, such that the distance between the scores is at least equal to the width of the tabs.

Appeal No. 2004-1230
Application No. 09/925,232

Appealed claims 7-9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Mori.

Appellant submits at page 3 of the Brief that "[f]or purposes of the present appeal, all claims stand or fall together." Accordingly, although appellant includes separate arguments for claims 8 and 9 at page 6 of the Brief, all the appealed claims stand or fall together with claim 7, and we will limit our consideration of this appeal accordingly.

We have thoroughly reviewed each of appellant's arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejection for essentially those reasons expressed in the Answer.

Appellant does not dispute the examiner's factual determination that Mori discloses a tamper-indicating threaded closure comprising the presently claimed threaded cap and tamper-indicating ring which splits at at least one point on the periphery of the ring when the closure is removed from the container. Also, like appellant's closure, the ring of Mori is

interconnected to the cap by frangible bridges and contains tabs which engage the container which serve to sever the frangible bridges when the cap is removed. Appellant also acknowledges that the ring of Mori has first and second vertically-oriented scores which enable splitting of the ring during removal of the closure.

It is appellant's principal contention that the scores, or breaking lines 32, of Mori are positioned adjacent each other in spaced relation smaller than the circumferential width of the base edge of the tabs. Appellant contends that:

He provides first and second vertically-oriented scores for splitting the ring, as does Mori, but the scores are spaced from each other a distance at least equal to the width of the tabs, thus providing a permanent bridge of greater arcuate length, reducing the necessity of performing as many horizontally-oriented slits which form the remaining severable bridges [page 5 of Brief, first complete sentence].

We agree with the examiner that appellant's argument is not supported by the Mori disclosure. In particular, we concur with the following analysis given by the examiner at page 3 of the Answer, penultimate paragraph:

As seen in figure 2 of Mori, the tabs **26** have a width **W** and are spaced apart by a distance representing the pitch **P** of the tabs which is at least equal to the width of the tabs since **P** is greater than **W**. Further, the vertically oriented first and second scores **32** are

Appeal No. 2004-1230
Application No. 09/925,232

spaced apart by a distance **D**. The distance **D** between the two vertically oriented scores on the ring is at least equal to the width of the tabs. Reading at column 6, lines 47-56 and applying the mathematical equation therein, the vertically oriented first and second scores are spaced apart by a distance at least equal to the width of the tabs.

We note that appellant has not refuted the examiner's analysis and we are at a loss to understand appellant's argument that the distance between score lines 32 of Mori is at least equal to the width of the reference tabs, as required by claim 7 on appeal. The formula given at column 6 of Mori clearly requires that the distance between scores 32 (**D**) be greater than the width of the tabs 26 (**W**). Indeed, it would appear that the tamper-indicating threaded closure of claim 7 is described by Mori within the meaning 35 U.S.C. § 102.

As a final point, we note that appellant bases no argument upon objective evidence of nonobviousness, such as unexpected results.

In conclusion, based on the foregoing, the examiner's decision rejecting the appealed claims is affirmed.

Appeal No. 2004-1230
Application No. 09/925,232

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED

EDWARD C. KIMLIN)	
Administrative Patent Judge)	
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CHUNG K. PAK)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
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Administrative Patent Judge)	

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Appeal No. 2004-1230
Application No. 09/925,232

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